

REMARKS

By the present amendment claims 2 and 3 have been cancelled and claim 1 has been amended. Presently the application includes independent claims 1 and 6 and dependent claims 4 and 5.

The Examiner rejected claim 3 under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Examiner stated that to constitute a proper Markush group the materials must be recited in the conventional manner. By the present amendment claim 3 has been cancelled, thus this rejection is mute. A large portion of the substance of claim 3 has been incorporated into claim 1 by the present amendment and this portion has been modified accordingly.

The Examiner rejected claims 1, 2 and 4-6 under 35 U.S.C. § 102(b) as being anticipated by Dany et al. and JP-63-091,606. The Examiner points to column 5, example 2, as well as the entire document of Dany et al. and the abstract of JP-63-091,606. The Examiner states that the reactive features indicated in claim 6 are held to be inherently possessed by the teachings of Dany et al. and JP-63-091,606.

The rejection of a claim under 35 U.S.C. § 102(b) requires that each and every limitation of the rejected claim be found within a single reference. If even a single limitation of the rejected claim is not found within the reference the rejection under 35 U.S.C. § 102(b) cannot be sustained and must be withdrawn.

By the present amendment claim 1 has been amended to require that the process for producing the polyurethane foam comprise reacting isocyanates with isocyanate reactive

compounds in the presence of blowing agents and in the presence or absence of catalysts, additives, and/or auxiliaries. Claim 1 furthermore requires that the reaction be carried out in the presence of at least one of the following compounds: "acrylic acid, crotonic acid, isocrotonic acid, sorbic acid, fumaric acid, cinnamic acid, hydroxyethyl acrylate, 3-(acryloyl-oxy)-2-hydroxypropyl methacrylate, benzyl cinnamate, trans-3-nonen-2-one, benzalacetone, dibenzalacetone, benzalacetophenone, 1-methylbenzalacetophenone, crotonaldehyde, cinnamaldehyde, methyl vinyl ketone and an α,β -unsaturated polyester diol prepared by polycondensation of maleic acid, fumaric acid, methacrylic acid or acrylic acid with oligomeric diols having a molecular weight factor per double bond of from 150 to 3000, a functionality of from 2 to 6, a hydroxyl number of from 20 to 800 and an acid number of from 0 to 15".

Neither Dany et al. nor JP-63-091,606 disclose the specific compounds now found within claim 1 of the present application, thus the rejection of claim 1 and claims which depend therefrom under 35 U.S.C. § 102(b) must be withdrawn.

The Examiner has suggested that claim 6 is rejectable under 35 U.S.C. § 102(b) based on Dany et al. or JP-63-091,606 because such would be inherently possessed in the teachings of these two references. The Examiner is directed to Dany et al., column 2, lines 45-61 wherein Dany et al. discloses the stabilizers of his invention, none of which are included in the language of claim 6. In addition, Dany et al. teaches that the "stabilizers" disclosed are useful for stabilizing flame-retardant, phosphorus and halogen-containing compounds. Thus, there is no teaching or likelihood that the reaction required by claim 6 will occur within the

foams disclosed in Dany et al. Likewise, the Japanese reference refers to stabilization of bromine-containing fluorocarbons that are used as blowing agents. There is no suggestion within either reference of the reaction required by the language of claim 6 thus the rejection of claim 6 based on either of these references under 35 U.S.C. § 102(b) is improper and must be withdrawn.

The Examiner rejected 1-4 under 35 U.S.C. § 102(b) as being anticipated by either Asako et al. or Omure et al. The Examiner points to column 2 line 39 thru column 3 line 11, as well as the entire document of Asako et al. and column 3 line 24-50 as well as the entire document of Omure et al.

Asako discloses formation of a polymer emulsion comprising a polymer of ethylenically unsaturated monomers that are polymerized in an aqueous solution prior to their use in preparation of polyurethane foams. This polymer is then added to the foams. The present application does not use any such polymer. In addition, none of the compounds disclosed in Asako et al. are found within the limitations of amended claim 1 thus the rejection of claim 1 and the claims which depend therefrom based on Asako et al. under 35 U.S.C. § 102(b) is improper and must be withdrawn. Likewise, there is no teaching within Omure et al. of carrying out the polyurethane reaction in the presence of the compounds now recited in amended claim 1. Omure et al. teaches a variety of compounds as blowing agent stabilizers but none of these include those now found in amended claim 1. Thus, the rejection of claim 1 and the claims which depend therefrom under 35 U.S.C. § 102(b) based on Omure et al. is improper and should be withdrawn.

The Examiner rejected claims 5-6 under 35 U.S.C. § 103(a) as being unpatentable over Asako et al. and Omure et al. each taken individually as applied to claims to 1-4 and further in view of Moore et al.

Rejection of a claim under 35 U.S.C. § 103(a) requires that there be some teaching, suggestion, or motivation found within the prior art references themselves for combining the references. In addition, it is necessary that support be found within the references themselves in the form of a teaching, suggestion, or motivation for modifying the cited references in a manner to produce the rejected invention.

As discussed above with respect to Asako and Omure et al. neither of the references disclose the compounds now found in amended claim 1, which claim 5 depends from. In addition, this deficiency is not supplemented by the disclosure of Moore et al. Thus the rejection of claim 5 under 35 U.S.C. § 103(a) based on Asako et al., Omure et al., and Moore et al. is improper and must be withdrawn. Likewise, neither Asako, Omure, or Moore et al. disclose the reaction products claimed in present claim 6. Furthermore, there is no motivation, teaching, or suggestion found in any of the references that would lead one of ordinary skill in the art to modify the disclosures to produce the invention as claimed in claim 6. There is no teaching of the reaction required in claim 6 and it is not inherent in these references. Thus, the rejection of claim 6 under 35 U.S.C. § 103(a) based on the cited references is improper and must be withdrawn.

Applicant's attorney respectfully submits that the claims as amended are now in condition for allowance and respectfully requests such allowance.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS

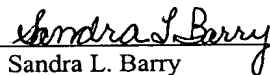
February 5, 2004
Date



Randall L. Shoemaker, Registration No. 43,118
Howard and Howard Attorneys, P.C.
The Pinehurst Office Center, Suite 101
39400 Woodward Ave.
Bloomfield Hills, MI 48304-5151
(248) 723-0425

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I hereby certify that this Amendment is being deposited with the United States Postal Service as Express Mail, Mail Label No. EV377751295, postage prepaid, in an envelope addressed to Commissioner for Patents, , P.O. Box 1450, Alexandria, Virginia 22313-1450, on February 5, 2004.


Sandra L. Barry